

FROM

MEMO ENDORSED

KAVANAGH MALONEY & OSNATO LLP

415 MADISON AVENUE

NEW YORK, NEW YORK 10017

TELEPHONE: 212-207-8400

FACSIMILE: 212-678-7324

JOHN E. OSNATO
J. HAYES KAVANAGH
JAMES J. MALONEY
JOEL M. RUDELL
DAVID F. BAYNE
KIRSTIN T. KNIGHT
GERALDINE M. CUNNINGHAM

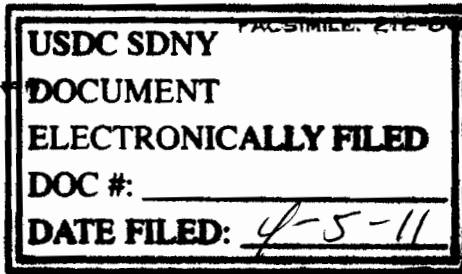
SARAH A. DAHL
STEVEN M. CORDERO
MEREDITH D. BELKIN

JORN A. HOLL
JAMES R. BRECKENRIDGE
OF COUNSEL

DIRECT DIAL
212-906-8327

E-MAIL
dbayne@kmollp.com

VIA FAX (212) 805-7949



April 4, 2011

Honorable Kevin P. Castel
United States District Court Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Counsel's attention is called to Local Rule 12.1.

Pre-motion conference waived. File notes by April 18. Plaintiff's response is due May 18. Any reply by defendant is due May 27. SO ORDERED

Re: Robert Scott v. WorldStarHipHop Inc. et al., Case No. 10-CV-9538 (PKC)(RLE)

Dear Judge Castel:

We are counsel to Defendant Berkeley College. We write pursuant to Your Honor's Individual Practice Rules to request a pre-motion conference, or, in the alternative, that such a conference be waived, with respect to Berkeley College's motion to dismiss Plaintiff's Complaint in its entirety as against Berkeley College. Defendant's time to answer or move in response to the Complaint expires on April 11, 2011, and Defendant is prepared to serve and file its motion by that date.

In addition, we request that discovery be stayed while the motion is pending and we also request direction from the Court with respect to the appropriate procedure for submitting a copy of the video at issue in this copyright case with the motion because the ECF system is not designed to handle the submission of video content.

The pro se complaint in this copyright infringement action alleges that Berkeley College violated Plaintiff's alleged copyright in a cell phone video which Plaintiff calls: "Disgraceful: College Fight in NYC Breaks Out Between A Guy, His Girl and Another Girl in Class (Man Strong Arm's The Student, Hitting her with body shots)." Plaintiff's sole allegation against Berkeley College is that an unidentified "member" of Berkeley

Honorable Kevin P. Castel
United States District Court Judge
April 4, 2011
Page 2 of 3

College allegedly uploaded the video to the internet. Plaintiff has appeared pro se in this action and his complaint alleges a right to both injunctive relief and to statutory damages.

Berkeley College intends to move to dismiss the complaint on three grounds. First, the complaint fails to allege facts showing that Plaintiff owns a registered copyright for the video at issue as required by 17 U.S.C. §411. Plaintiff has admitted in prior proceedings before the New York State Human Rights Division ("NYSDHR") and in an Article 78 proceeding he commenced in the New York State Supreme Court against the NYSDHR and Berkeley College, of which this Court may take judicial notice, that he is the man seen in the video punching a female student from behind while she is fighting with another female student and that someone else took the video. Thus, Plaintiff is not the author of the video and has not alleged facts showing that he acquired rights that would permit him to register a copyright in it.

Nor has Plaintiff alleged a valid registration of any copyright for the video. No registration certificate is attached to the complaint and the alleged Library of Congress number recited in the complaint is not a proper copyright registration number.

Berkeley College will also move to dismiss the complaint on the ground that Plaintiff has not alleged facts showing that Berkeley College is responsible for uploading the video to the internet. As stated above, Plaintiff's sole allegation is that an unidentified "member" of Berkeley College uploaded it. However, in his Article 78 Petition, Plaintiff admitted that it was the student who took the cell phone video who "forwarded the video to third parties for advertising purposes...." Berkeley College is not responsible for the alleged conduct of one of its students.

Finally, Plaintiff alleges no facts that would make Berkeley College liable for any alleged act or omission by co-defendant WorldStarHipHop Inc.

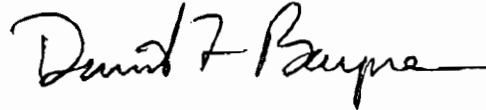
Because the Complaint against Defendant Berkeley College is so flimsy, and indeed, appears to be nothing more than an act of retaliation by a disgruntled former student of the College, we respectfully request that the Court stay discovery in this action pending a decision on the motion to dismiss. It is respectfully submitted that Berkeley College should not have to endure the expense and distraction of discovery in a meritless matter such as this. The first pre-trial conference in this action is currently scheduled with Magistrate Judge Ellis for April 21, 2011.

Finally, Berkeley College intends to submit a copy of the video at issue in this case as an exhibit to its motion. Our office called the Clerk's office and was told to

Honorable Kevin P. Castel
United States District Court Judge
April 4, 2011
Page 3 of 3

request direction from Your Honor with respect to how the Court would like us to handle the filing of the video and the submission of a copy of it to Court. The video is only a few minutes long and can easily fit on a DVD-R.

Sincerely,

A handwritten signature in black ink, appearing to read "David F. Bayne", with a stylized flourish at the end.

David F. Bayne

cc: Robert Scott, pro se
(By e-mail to RobertScott117@GMail.com and robertscott117@live.com
and by U.S. Mail)